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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RENATUS JOSEPHUS VAN DER VLEUTEN and  
MIHAELA VAN DER SCHAAR

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Appeal 2008-005062  
Application 09/975,382  
Technology Center 2400

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Before JOHN A. JEFFERY, LANCE LEONARD BARRY, and  
JAMES R. HUGHES, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

ON REQUEST FOR REHEARING<sup>1</sup>

Appellants request that we reconsider our decision of February 24, 2010 (“Decision”) where we affirmed the Examiner’s rejection of claims 1-19 under 35 U.S.C. § 103.

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

We reconsider our decision in light of Appellants' arguments in the Request for Rehearing ("Request"), but we decline to change the decision for the following reasons.

*Claims 1-11, 13-16, 18, and 19*

We disagree with Appellants' allegation that we misapprehended or overlooked that claim 1 recites generating quality information indicating distortion of an object *when the bitstream is truncated* during decoding. Request, at 1 (emphasis in original).

First, the Examiner relies on Park for teaching generating quality information indicating object distortion during decoding (Ans. 13-14)—findings that we adopted as our own. Decision, at 5-6. Although the Examiner acknowledges that Park does not disclose that the generated quality information indicated object distortion when the bitstream is truncated during decoding, the Examiner nevertheless relies on Simon for associating quality (quantization) information with bitstream truncation during decoding. Decision, at 6 (citing Ans. 4, 15). In this regard, the Examiner cites the functionality shown in Simon's Figures 44 through 46, 59, and 60 and associated passages as support for at least suggesting bitstream truncation during decoding (Ans. 15) in concluding the claim would have been obvious. We found no error in combining these collective teachings since it is tantamount to the predictable use of known elements according to their established functions. Decision, at 6.

Although Appellants allege that Simon indicates that distortion is caused by quantization—not truncation (Request, at 4)—Appellants' Appeal Brief did not present this particular argument. Rather, Appellants'

arguments in the Brief focused principally on the alleged shortcomings of Park regarding the disputed limitation, namely that Park does not generate quality information indicating distortion of an object as claimed (*see* Br. 9-10)—arguments that we found unpersuasive. Decision, at 5-6. And while Appellants' Brief acknowledges Simon's variable quantization based on the number of pixels within encoded regions (Br. 11), this somewhat terse description was provided in connection with Appellants' contention that there is no apparent reason to combine the references as the Examiner proposes (Br. 11-12)—an argument that we found unpersuasive for the reasons indicated in the opinion. Decision, at 5-6.

In any event, Appellants' argument that quantization information is insufficient to indicate the distortion that will be *produced by* truncation (Request, at 4) is not commensurate with the scope of claim 1. Claim 1 merely calls for the generated quality information to indicate object distortion *when* the bitstream is truncated during decoding—a temporal limitation that does not require that the *truncation itself cause the distortion*, and therefore does not preclude indicating other types of object distortion (e.g., distortion associated with quantization noise) that can occur during the recited period, namely when the bitstream is truncated during decoding.

As we indicated in the decision, we find no error in the Examiner's position which is based, in pertinent part, on (1) Park's generating quality information that is based on quantization information and related quantization noise; (2) Park's decoding of this information; and (3) Simon's associating quantization information with truncation. Decision, at 5-6. Based on these collective teachings, we see no reason why the generated

quality information would not indicate at least some type of object distortion (e.g., distortion associated with quantization noise) during the relevant period, namely when the bitstream is truncated during decoding.

Since we are not persuaded that our decision was erroneous, we therefore maintain our affirmation of the Examiner's obviousness rejection of claims 1-11, 13-16, 18, and 19.

### *Claims 12 and 17*

Regarding claims 12 and 17, Appellants allege that we misapprehended or overlooked that the cited prior art does not teach or suggest quality information indicating distortion of an object in relation to a given position in the bitstream upon a truncation. Request, at 5-6.

But as we indicated in the decision, we find no error in the Examiner's reliance on Park for this feature. *See* Decision, at 9 (citing Ans. 9, 10, 13-15, and 17). We reach this conclusion noting the scope and breadth of the claim language which does not actually require a truncation, but rather quality information *indicating* distortion of an object *in relation to* a given position in the bitstream *upon* a truncation. That is, the information need only indicate object distortion that, in the event of a truncation, would be related to a given position in the bitstream.

This broad language simply does not preclude Park's (1) generating quality information that is based on quantization information and related quantization noise; and (2) decoding this information as noted above. Even assuming, without deciding, that Park does not contemplate truncation, Park's quality information would nonetheless indicate object distortion that,

even if a truncation were to occur, would be at least related to a given position in the bitstream in that event. In short, the sheer breadth of the claim language does not preclude this possibility.

Since we are not persuaded that our decision was erroneous, we therefore maintain our affirmance of the Examiner's obviousness rejection of claims 12 and 17.

### CONCLUSION

For the foregoing reasons, we have granted Appellants' request to the extent that we have reconsidered our decision of February 24, 2010, but we deny the request with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

### REHEARING DENIED

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